

REMARKS

Claims 1-11 and 13-20 are presently pending in the application.

Applicant is cognizant of 37 C.F.R. § 1.198 which provides that prosecution of the proceeding before the Primary Examiner will not be reopened or reconsidered by the Primary Examiner, except under certain provisions, such as the filing of an RCE, because the prosecution is closed and Appellant is therefore not entitled to have an Amendment entered as a matter of right. However, MPEP § 1214.07 provides:

If the Amendment obviously places an application in condition for allowance, regardless of whether the Amendment is filed with an RCE, the Primary Examiner should recommend that the Amendment be entered, and with the concurrence of the Supervisory Patent Examiner, the Amendment will be entered. Note MPEP § 1002.02(d).

For the reasons set forth below, it is submitted that the present Amendment should be entered, since it clearly places the application in condition for allowance, and merely adopts the position of the Examiner taken for the first time in the Examiner's Answer.

In an exchange of telephone calls with Examiner Kruer on January 22, 2007, Examiner Kruer initially took the position, after consultation with his SPE, that this application would be held abandoned under the provisions of MPEP § 1214.06, part I (A), since no claims stand allowed. However, the undersigned pointed out that these provisions and examples do not apply to the present situation, since the allowable claims were not objected to prior to appeal, but only in the Examiner's Answer, after Applicant had filed its Appeal Brief. Further, the undersigned pointed to the above quoted provisions of MPEP § 1214.07, which provides that the Amendment should be entered in circumstances such as the present case, where the Amendment obviously places the application in condition for allowance.

Examiner Kruer then agreed, in consultation with his SPE, that the Amendment would be entered without filing an RCE. Therefore, he suggested that the Amendment be filed with a Petition to reopen prosecution. The undersigned then pointed out that no Petition to reopen prosecution was required, pointing to MPEP § 1002.02(d) Petitions and Matters Decided by Supervisory Patent Examiners. The undersigned pointed out that paragraph 8. under § 1002.02(d) does not mention any petition, whereas other paragraphs of that section do mention a petition where required. Examiner Kruer then agreed that no Petition to reopen was necessary.

In the Examiner's Answer dated February 1, 2006, the Examiner withdrew the rejections of claims 12, 15-17 and 20 and merely objected to these claims as being dependent upon a rejected base claim, but indicated for the first time that they would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims. In view of the Decision of the Board of Patent Appeals and Interferences dated November 24, 2006, affirming the Examiner's rejection of the remaining claims, allowable claim 12 has now been rewritten in independent form by incorporating the subject matter of claim 12 into previous claim 1. In addition, claim 15 has been rewritten in independent form by incorporating the subject matter of previous claim 1. Claims 16, 17 and 20 already depended from allowable claim 15 and are therefore allowable as is. However, claim 20 has been amended to conform the preamble to the preamble of claim 15.

These amendments are supported at least by the original claims, and no new matter has been added. Moreover, the amendments merely place the allowable claims in condition for allowance and carry out suggestions made by the Examiner for the first time in the Examiner's Answer, so that this Amendment After Appeal Decision is proper. The amendments require no more than a cursory review by the Examiner and "obviously places [the] application in condition for allowance." Accordingly, entry of the amendments in accordance with MPEP § 1214.07 is respectfully requested.

In view of the above amendments and Remarks, it is submitted that all of the claims in the application patentably distinguish over the prior art and are in condition for allowance. Reconsideration and an early Notice of Allowance are respectfully solicited.

Respectfully submitted,

January 22, 2007 By: William W. Schwarze
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